



SEA 421 REPORT: ESTABLISHING A PROCESS FOR SELF-CERTIFICATION REGISTRATION

A Playbook for Future Occupational Regulation in Indiana

September 2014

“The proposal to establish a portal that would facilitate the use of private and voluntary certification as a complement to other state-authorized occupational licensing regimes is an important issue for the Indiana state economy, practitioners, and consumers.”¹

¹ SEA 421 Report on Self-Certification Registration: Hearing Before the SEA 421 Study Panel, 114 (2014) [hereinafter *Hearing*] (testimony of Prof. Morris M. Kleiner).

Self-Certification Registration

Self-Certification Registration (“SCR”) is a unique way to regulate occupations as it relies on the least burdensome elements of licensure, certification, and registration.

In short, individuals may voluntarily list their names in a state registry if they complete a certification process offered by a state-accredited organization. Only individuals who register may use the title “State Certified.”

The key distinction between SCR and other regulatory schemes is that SCR allows individuals to work in an occupation even if they are uncertified – or, if certified, who choose not to register.

By moving away from licensing and towards certification, Indiana will realize significant economic benefits including lower unemployment, fewer administrative costs, and greater competition in its labor markets. Residents will realize lower prices, more job opportunities, and the ability to make better choices about the services they buy and professionals they hire.²

² A proposal to move away from licensing towards voluntary certification is not unique to this report. *See e.g.*, Byron Schlomach, *Six Reforms to Occupational Licensing Laws to Increase Jobs and Lower Costs*, 247 GOLDWATER INST. POL’Y REP. 3 & 22-24 (July 10, 2012) (“Reform 4: Create an environment that encourages and legally enforces private certification”).

However, no state has implemented a widespread, regulatory structure based on the principles of certification, while also incorporating elements of licensure and registration.



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Members of the Legislative Council,

Thank you all for your service to our great state and willingness to take a collaborative and deliberative look at alternatives to traditional forms of licensure. Your dedication to reviewing and studying Indiana's regulatory environment is vital to the continued economic prosperity of our state and the well-being of Hoosier consumers and practitioners.

Licensure requirements must be carefully balanced as the regulatory environment should be limited for practitioners and the public safety concerns addressed for consumers. Unnecessary barriers to practice should be removed, so our economy can flourish.

Certification enables professionals of a given industry to seek additional education and distinction as a means to differentiate themselves from their competitors – free of bureaucratic interference. The Indiana Professional Licensing Agency manages over 35 boards and commissions for licensed occupations. The agency also manages a registry for interior designers (2009) with much acclaim from industry stakeholders and certified individuals.

The idea of a self-certification registration can be implemented for other professions – currently licensed or not by the state. With standards set by the industry, qualified Hoosiers would be recognized with the title of "state certified." This would remove the arbitrary process from the state in determining what specific criteria must be met by all practitioners regardless of their specialty or business model. From a budgetary standpoint, the impact is twofold: the agency would reduce its administrative, operational, and board member costs, and professionals wouldn't be required to pay fees and jump through other bureaucratic hoops to be able to go to work every day.

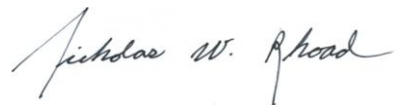
The starting salary for a customer service representative with the agency is \$22,724. The starting salary for an assistant director is \$33,748, and board directors start at \$41,574. Fringe benefits are in addition to these figures. There are also additional costs for paying board members per diem and lodging for all board meetings. This cost varies as it is dependent on the number of meetings and the number of board members appointed to serve, but the costs are in the tens of thousands of dollars per year.

From an administrative perspective, each additional occupation that is mandated to be licensed by the state is a significant cost to taxpayers. The state's resources are limited, yet Hoosiers expect a high level of customer service from our agency as we are what separate them from being able to practice a trade or run a business. More than 470,000 Hoosiers have to get a license or permit before they can receive their paycheck and provide for their family. If license requirements continue to increase and more occupations are mandated to be licensed, there will continue to be additional burdens and costs placed on the agency, and consequentially, Hoosiers consumers and professionals.

We are tasked with the challenge of addressing licensing and how we can best serve Hoosiers. A self-certification registry, while not intended to be applied to all occupations, is a prudent and effective tool for consumers to understand that their practitioner has met industry standards and can safely address their needs – without arbitrary government permission to practice.

Thank you all again for your service to our state and reviewing how Indiana's regulatory practices are affecting job creation and economic prosperity for Hoosiers.

Kindest Regards,

A handwritten signature in cursive script that reads "Nicholas W. Rhoad". The signature is written in dark ink and is positioned above the printed name.

Nicholas W. Rhoad

About This Report

The Indiana Professional Licensing Agency (“IPLA”) submits this report to the Legislative Council pursuant to Senate Enrolled Act No. 421 (“SEA 421”), which states in part the following:

[IPLA] shall submit a report to the legislative council ... to establish a process to allow individuals employed in an occupation who meet certain requirements to certify to the agency the individual’s qualifications to be included on a list maintained by the agency.

...

The report ... must include the following: (1) Occupations that may be included on the list. (2) Whether to provide title protection for the individuals included on the list. (3) Enforcement provisions that would be used. (4) A description of auditing and maintenance of the list. (5) The cost of establishing and maintaining a list. (6) The cost of an individual applying for and renewing inclusion on the list.³

On August 5, 2014, IPLA coordinated a public hearing at which a bipartisan panel⁴ received written and oral testimony from various stakeholders, including economists, academic subject matter experts, regulated professionals, and representatives of occupations wanting to use SCR.⁵

This report is broadly structured as follows: (I) overview of occupational regulations; (II) process for implementing SCR in Indiana; and (III) legislative considerations and other conclusions. Evidence reflects an overwhelming preference for certification instead of licensing, except for regulating doctors, lawyers, and professionals whose services might pose a risk to disadvantaged consumers.

The prospect of self-certification registration has received widespread support although no specific occupations are recommended for inclusion in a state registry. Rather, this report provides eligibility standards the state should consider if and when the Indiana General Assembly pursues legislation to authorize SCR in Indiana.

³ This language originated in Senate Bill 244 (2014), which the Senate passed 48-0. Subsequently, the House Committee on Employment, Labor, and Pensions (Gutwein, Chair) amended its language into Senate Bill 421. Ultimately, the Indiana House of Representatives passed SB421 96-0. Indiana Governor Mike Pence signed SEA 421 on March 25, 2014.

⁴ “Acknowledgments,” § IV *infra* at 16; *in addition*, the panel was co-chaired by Nicholas Rhoad and Adam H. Berry.

⁵ *See* Ex. 1 (list of witnesses and their written testimony, if available).

The following illustrations demonstrate the State's role in the SCR framework:

PHASE I: OCCUPATION APPROVAL

Occupations "apply" to IPLA for inclusion in the SCR registry.

Supporting organization(s) and applicant-occupation representatives present to the Jobs Creation Committee at a public hearing for accreditation and inclusion, respectively.

Using predetermined factors, the JCC recommends whether IPLA should accredit the supporting organization(s) and include the occupation in the registry.

IPLA has final decision making authority.

PHASE II: INDIVIDUAL REGISTRATION

Eligible* professionals must complete a predetermined certification process for the respective SCR occupation.

Provide proof of completion to IPLA in a manner established by IPLA.

Pay the nonrefundable registration fee established by the JCC.

Individuals who complete the previous three steps are considered "State Certified." However, IPLA may audit information or documentation it receives during the SCR process.

*Minimum eligibility standards are established statutorily.

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I. Regulating Occupations

The most common regulatory structures used by state and local governments to oversee occupations are as follows: licensure, certification, and registration.

(A) State of Indiana

IPLA is the umbrella agency for 38 professional boards and commissions that regulate 446,109 professionals licensed to perform 134 different occupations.⁶ More than 332,000 people are licensed by other state agencies.⁷ However, an even larger percentage of workers are licensed as these totals exclude an unknown number of licenses issued (discretionally) by Indiana's municipalities for fields such as electrical, refrigeration, high pressure steam (HVACR), wrecking, heating and air conditioning. Currently, Indiana's labor force⁸ includes 3,230,944 residents aged sixteen (16) and older.⁹ As such, approximately 25% of Indiana's labor force is licensed.¹⁰

Workers in Indiana earn an average annual income of \$38,812.¹¹ Excluding outliers, licensed professionals, on average, earn between \$29,000 and \$74,000.¹² Estimated nationally, the "cost of licensing ... in the form of lost jobs is between 0.5% and 1.0%" of the labor force.¹³ Applying

⁶ Total number of active licensees as of August 4, 2014; these boards oversee 27,167 entity licenses spread across 63 different types.

⁷ Indiana agencies with largest number of active individual licenses are as follows: 172,984 by Alcohol & Tobacco Commission (209,180 total, including business permits, as of Sept. 26, 2014); 6460 by Dept. of Natural Resources (as of Sept. 25, 2014); 18,538 by Indiana Supreme Court (as of May 15, 2014); 12,158 by Gaming Commission (as of May 15, 2014); 63,247 by Dept. of Insurance (as of April 8, 2014); 58,709 [teachers] by Dept. of Education (as of 2010-2011 school year).

⁸ IN Dep't of Workforce Development, *Hoosiers by the Numbers*. Available at <http://www.hoosierdata.in.gov/nav.asp?id=40>. ("For statistical purposes, the labor force is the sum of persons employed and persons unemployed and looking for work.")

⁹ 3,042,650 employed/188,294 unemployed; seasonally adjusted. Indiana University's Kelley School of Business, *STATS Indiana*. Available at http://www.stats.indiana.edu/laus_sa/laus_view1.html (as of Sept. 26, 2014).

¹⁰ Calculation adjusted for out-of-state residents to whom state agencies have issued licenses.

¹¹ 2013 "Per Capita Personal Income" in Indiana. U.S. Dept. of Commerce, Bureau of Economic Analysis. Available at <http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=3#reqid=70&step=30&isuri=1&7022=21&7023=0&7024=non-industry&7033=-1&7025=0&7026=18000&7027=2013&7001=421&7028=-1&7031=0&7040=-1&7083=levels&7029=21&7090=70>.

¹² Estimate based sample population of professionals working in different geographic areas in Indiana.

¹³ *Hearing, supra* note 1, at 115 (testimony of Kleiner) (Research by Professor Kleiner, Professor Alan Krueger of Princeton University and the former chairman of President Obama's White House Council of Economic Advisers, and Professor Alexandre Mas of Princeton University and former Chief Economist in the U.S. Department of Labor and the Office of Management and Budget under President Obama.)

the lower percentage to Indiana would result in approximately 16,000 new jobs. Consequently, more people could work and earn higher incomes if Indiana licensed fewer occupations.¹⁴

(B) When Governments License

(1) Economics 101

People looking to purchase services from licensed professionals base their buying decisions in part on accessibility and price. Those who decide to purchase services have access to licensed providers and can afford to pay the necessary remuneration. Those who decide not to purchase professional services are either without access or the means to pay for the services.

When the government decides to license an occupation, it restricts the supply of people who can legally perform the occupation's "scope of practice."¹⁵ Consumers' "choice" is limited to hiring either a licensed professional or someone practicing illegally on "the black market."¹⁶ By shrinking the available supply of labor, licensing increases prices by 15% or more.¹⁷ Therefore, licensing is most detrimental to people who live in low population areas and/or are poor. In Indiana, more than 1.47 million people (or 22% of the total population) live in rural communities and approximately 15% live in poverty.^{18,19}

(2) Stunting Middle Class Growth

Melony Armstrong recently testified before Congress about Mississippi's burdensome licensing requirements imposed on African hairbraiders and hairbraiding instructors.²⁰ In 2004, Ms. Armstrong teamed with others to eliminate "needless government-created barriers."²¹ Mississippi

¹⁴ *Hearing, supra* note 1, at 112 (testimony of Kleiner) ("[C]ertification has benefits over licensing for workers. Certification doesn't fence out workers or cause the type of problems in the labor market that licensing does.")

¹⁵ *Hearing, supra* note 1, at 135 (testimony of Prof. Gary Wolfram).

¹⁶ *Id.* at 153-54 (statement by Rep. Jud McMillin).

¹⁷ *Id.* at 115 (testimony of Kleiner).

¹⁸ United States Department of Agriculture, Economic Research Service. Based on 2013 census data. Available at http://www.ers.usda.gov/data-products/state-fact-sheets/state-data.aspx?StateFIPS=18&StateName=Indiana#.VCiPQbTp_RY.

¹⁹ Population Reference Bureau, "People Below the Poverty Level in the Past 12 Months (1-Year ACS)." (2012). Available at <http://www.prb.org/DataFinder/Topic/Rankings.aspx?ind=185> (last visited September 30, 2014).

²⁰ *Barriers to Opportunity: Do Occupational Licensing Laws Unfairly Limit Entrepreneurship and Jobs?: Hearing to examine the proliferation of occupational licensing laws and the impact these have on business opportunities Before the SUBCOMM. on Contracting and Workforce of the H. COMM. on Small Business*, 113th Cong. 2-3 (2014) (written statement of Melony Armstrong, African Hairbraider, Owner of "Naturally Speaking" Salon, Tupelo, MS) (requirements included 3200 hours of cosmetology school and tuition, exam fees, and three different licensing fees).

²¹ *Id.* at 3.

eventually changed its laws to require only that hairbraiders pay a \$25 registration fee and abide by relevant sanitation codes.²²

Indiana still requires someone to obtain a cosmetology license to braid hair; meaning the person must, among other things, graduate from beauty culture school and pass the examination for cosmetologist license applicants.²³ Earlier this year, Indiana’s State Board of Cosmetology and Barber Examiners denied licensure to someone because she disclosed on her application that she worked in a salon “and performed hairbraiding.” The board denied her application for practicing without a license.²⁴ Even though this might seem unreasonable, the board was merely applying the statutory prohibition against “styling, arranging ... or similarly treating hair” without a cosmetology license.²⁵

As these hairbraiding examples show, licensing prevents those with unique skill-sets from working in professions in which they are otherwise capable to perform.²⁶ Licensing’s “barriers” are often too costly to overcome, especially for those who have neither the time nor the resources to pursue a license.²⁷

Licensing also limits “employer choice,” i.e. restricting the applicant pool to only those who have licenses. The better option is the let-the-best-man-win approach: allow applicants to send “signals” about their qualifications or experience, and let employers choose the person they believe is the best fit for the job, licensed or not.²⁸

(C) State’s Choice: Licensure or Certification?

There is a menu of options between “no oversight” – i.e. regulation through the market – and full licensure.²⁹ Certification is one such option that captures licensure’s key benefit: title protection, which means that only certain, eligible professionals may use a predetermined job title that “signals” the person’s background or experience. For example, in Indiana, interior designers use

²² *Id.* at 3-4.

²³ Ind. Code § 25-8-9-3.

²⁴ *Id.* § 25-1-11-19(b)(1) (“The board may refuse to issue a license ... to an applicant for licensure if the applicant practiced without a license in violation of the law.”).

²⁵ *Id.* § 25-8-2-5

²⁶ DICK M. CARPENTER, LISA KNEPPER, ANGELA C. ERICKSON & JOHN K. ROSS, LICENSE TO WORK: A NATIONAL STUDY OF BURDENS FROM OCCUPATIONAL LICENSING 6 (Institute for Justice 2012) (“An ‘occupational license’ is just that – government permission to work in a particular field”); *see also* exh. 1 (*hearing, supra* note 1, at 3 (written testimony of Lee McGrath)).

²⁷ *See* exh. 1 (*hearing, supra* note 1, at 3 (written testimony of McGrath)); *see also Expanding Opportunity in America: A Discussion Draft from the H. BUDGET COMM.* 66 113th Cong. (2014) (authored by Chairman Paul Ryan & House Budget Committee Staff) (“Eliminating irrational or unnecessary licensing requirements would not be a panacea, but it would open up new opportunities for low-income families and reduce costs for consumers.”).

²⁸ *Hearing, supra* note 1, at 185 (testimony of McGrath).

²⁹ *Id.* at 98 (testimony of Prof. Dick Carpenter).

a form of regulation similar to the SCR framework described in this report. Interior designers who meet statutory eligibility requirements (e.g., earn a specific degree, pass a national exam, etc.) may register with IPLA. Anyone may practice interior design in Indiana, but only those who register may use the title “registered interior designer.”³⁰ In fact, it is a crime for someone to “recklessly, knowingly, or intentionally” use the title personally or in advertisement or solicitation material.³¹ According to records maintained by the Interior Design Coalition of Indiana, at no time has someone tried to promote herself as “registered” without first being included in the state registry.³²

With certification, consumers may retain someone who is certified or uncertified – regardless of her personal or professional background or educational achievements.³³ When members of the legal profession told Nobel laureate economist Milton Friedman that every lawyer should be of Cadillac quality, he famously replied that “many people would be better off with a Chevy, a cheaper but clearly a functional alternative.”³⁴ Certification in lieu of licensure facilitates these types of purchase options for consumers.

If licensure improves quality simply by restricting entry into the profession, then consumers are being forced to pay at least 15% more for quality than they might otherwise want or need.³⁵ Not everyone demands the same level of quality.³⁶ The bottom line is that certification cures problems associated with licensing, in part, by providing consumers with more choices and lower prices.³⁷

³⁰ *Id.* at 14 (testimony of Connie Jung).

³¹ Ind. Code § 25-20.7-5

³² *Hearing, supra* note 1, at 18 (testimony of Jung) (discussing title protection with Sen. Greg Taylor).

³³ *Id.* at 154 (statement by Rep. McMillin); *Id.* at 115 (testimony of Kleiner).

³⁴ *Id.* at 113 (testimony of Kleiner).

³⁵ *Id.* at 115.

³⁶ *Id.* at 113.

³⁷ *Id.* at 117.

II. Self-Certification Registration: Establishing the Process

*Any alternative must seek to balance two extremes: overregulation and under-regulation. The former is seen as interference in the way people lead their lives, while the latter fails to provide the necessary public health and safety protection.*³⁸

Inquiry No. One: Occupations That “May Be Included” In The SCR Registry

At the August 5th public hearing, occupation representatives reinforced IPLA’s belief about the potential benefits of a SCR structure when they conveyed their members’ interest in using it as a means of regulation.³⁹ Further, since 2004, at least fifteen⁴⁰ occupations unsuccessfully sought licensure from the General Assembly. Despite this apparent interest, this report only *establishes the process* for a SCR structure and discusses general eligibility standards. It does not identify specific occupations that may use SCR if and when it is authorized statutorily.

(1) Step 1: Application Process

(a) Generally Ineligible Occupations

Rather than describing occupations that may be included in the registry, it is more beneficial to discuss standards that make an occupation generally ineligible. As a general rule, the default assumption is that occupations can use a SCR structure. However, policymakers and the public have always believed certain occupations deserve nothing short of full licensure.

Trade associations and other licensing proponents lobby legislators to enact licensing regimes under the assumption of helping the public.⁴¹ Other advocates claim licensing improves “average quality” and eliminates the most egregiously poor or dangerous service providers.⁴² Most common is the invocation of the catch-all phrase: *licensing is necessary to protect the health and safety of consumers*. Despite the rhetorical skepticism, evidence suggests that some occupations should be – or remain – subject to licensing regulations.

³⁸ *Id.* at 101 (testimony of Carpenter).

³⁹ *See generally* *exh. 1*.

⁴⁰ Agricultural Products Dealer; Art Therapists; Court Reporters; Electricians; Fire Alarm Inspectors; Genetic Counseling; Ginseng Growers; Heating and Cooling professionals; High Pressure Boiler Operators; Irrigation System and Water Vessel Pump Installers; Music Therapists; Painters; Pet Store Operators; Sprinkler System Inspectors; Unmanned Aerial Systems Operator.

⁴¹ *Hearing, supra* note 1, at 113 (testimony of Kleiner).

⁴² Morris M. Kleiner & Charles Wheelan, C., *Occupational Licensing Matters: Wages, Quality and Social Costs*. 30 CESif DICE Report. (March 2010).

Somewhat different than the normal practice, applicant-occupations will be asking IPLA to certify rather than license their workers. IPLA and the JCC are still obligated to recognize when an applicant is ineligible because its workers need to be licensed. Factors that IPLA and the JCC should consider for this purpose are as follows:

1. *Extent of asymmetric information possessed by providers.* Asymmetric information occurs when professionals know more about the services they sell than the customers to whom the services are sold.⁴³ For example, the victim of a car accident is unable to make an informed choice about emergency room in which he ends up. He will be relying on service providers he does not know nor that he chose.⁴⁴
2. *Extent to which providers have fiduciary responsibilities.* Some professionals are fiduciaries, meaning they are entrusted with rights and powers to use only for the benefit of others; in other words, it is more than a basic buyer/seller relationship.⁴⁵
3. *Extent to which providers possess exceptional powers.* Some professionals possess exceptional or “awesome” powers that can be easily misused for unscrupulous reasons. An attorney’s subpoena power is one example.⁴⁶
4. *Likelihood of severe externalities.* Externalities are unintentional consequences of an intentional act. For example, doctors who misdiagnose a contagious disease might be responsible for an outbreak of that disease.⁴⁷
5. *Public’s desire to protect the disadvantaged.* Disadvantaged individuals include those who are underage, disabled, illiterate,⁴⁸ incompetent or otherwise unable to make informed decisions when purchasing professional services. Licensure may be appropriate *only if* it improves the quality of services to disadvantaged consumers and simultaneously protects society’s stake in their well-being. For example, children are incapable of assessing their teacher’s quality.⁴⁹

⁴³ *Hearing, supra* note 1, at 136 (testimony of Wolfram) (referencing Nobel Laureate George Akerlof’s research on asymmetric information).

⁴⁴ *Id.* at 161.

⁴⁵ *Id.* at 201 (testimony of McGrath).

⁴⁶ *Id.*

⁴⁷ Kleiner & Wheelan, *supra* note 42, at 30; *see also* exh. 1 (*Hearing, supra* note 1, at 2 (written testimony of Charles Wheelan) (There are relatively few professionals who fall into the first category; even highly skilled professionals, such as brain surgeons, typically pose little risk to the general public.)).

⁴⁸ *Hearing, supra* note 1, at 148 (statement by Rep. Christina Hale).

⁴⁹ Kleiner & Wheelan, *supra* note 42, at 30.

(b) Disparity Assessment: Who Should Remain Licensed?⁵⁰

Again, this report makes no recommendation to deregulate specific occupations. But, occupations that are currently licensed in Indiana should also be considered candidates for a SCR structure. An important policy consideration is the treatment of occupations across various jurisdictions. Data obtained from the disparity investigations should be persuasive when identifying candidates for occupational *deregulation*; disproportionate treatment of occupations means that some states get along just fine without licensure. The disparity study frameworks are as follows:

1. Occupations that are licensed in Indiana and a minority of other states.
2. Occupations that experience especially onerous licensing requirements in Indiana compared to other states.
3. Occupations that experience especially onerous licensing requirements compared to occupations that have clear public health and safety implications.

A review of Indiana's licensing statutes reveals that eight occupations are licensed in fewer than twenty-five states.⁵¹ The same review reveals eight occupations that other states regulate using certification or registration.⁵² Three occupations fall into both categories: Licensed Home Inspector, Residential Care Administrator, and Plumbing Apprentice. As such, these might be ideal candidates for less burdensome regulation.

(2) Step 2: Public Meeting⁵³

After determining an occupation's eligibility, IPLA may direct the Jobs Creation Committee ("JCC")⁵⁴ to hear from applicant-occupations and their supporting organization(s) at a public hearing. More than one organization per occupation is eligible for accreditation (e.g., "Indiana Association of Profession X," "Southwest Indiana Profession X Society," "National Profession X Council," etc.). The JCC will hear testimony that will serve as its basis for recommending to IPLA which, if any, supporting organization(s) should be accredited and if the occupation should be included in the registry.

⁵⁰ See *Hearing, supra* note 1, at 99-101 (testimony of Carpenter).

⁵¹ Home Inspector, Genetic Counselor, Residential Care Administrator, Nurse Midwife, Embalmer, Plumbing Apprentice, Marriage and Family Health Associate, Mental Health Associate.

⁵² Home Inspector, Residential Care Administrator, Athletic Trainer, Dietician, Acupuncturist, Landscape Architect, Auctioneer, and Plumbing Apprentice.

⁵³ The JCC may call a special meeting or add the SCR applications to a previously scheduled meeting's agenda.

⁵⁴ Ind. Code § 25-1-16-3.

(3) Step 3: Accreditation

IPLA's accreditation is the most important aspect of the SCR process. If occupations are without an accredited support organization, then they are ineligible for SCR.

In addition to the JCC's recommendation, IPLA should consider the following factors about the organization to decide whether or not it should receive accreditation:

- Ability to certify and decertify its members
- Ability to investigate consumer complaints against its members
- Administrative functionality including member monitoring
- Continuing education services
- Organization's public reputation
- Public reputation of its members and the quality of services they provide
- Length of existence

These same factors should be considered when IPLA decides to suspend or revoke an accreditation.

Inquiry No. Two: Whether to Provide Title Protection to Those Who Register

Yes, individuals who register should receive title protection. For now, the best title option is "state certified." No existing regulated occupation uses this title. The public will better appreciate the significance of "state certified" if it is used universally by all professionals who use a SCR structure.⁵⁵

Effective title protection is the state's way of offering a "decision-making tool" to consumers.⁵⁶ One who calls himself "State Certified [Professional X]" is able to signal to consumers that he achieved certain qualifications the state considers to represent the highest quality of training or experience. Those without the title are unable to send the same signal. That does not mean, however, that someone without a certification – or title – is precluded from or incapable of competing against SCR professionals in the same market.⁵⁷

Inquiry No. Three: Effective Enforcement Provisions

Establishing a registry for professional occupations, including certain healthcare providers, should not adversely impact protection of the public. The existing legal protections for consumers are provided under common law and through existing statutory protections.

⁵⁵ See generally hearing, *supra* note 1, at 131 (testimony of Kleiner).

⁵⁶ See exh. 1 (hearing, *supra* note 1, at 3 (written testimony of Wheelan)); see also hearing, *supra* note 1, at 129 (testimony of Kleiner).

⁵⁷ Hearing, *supra* note 1, at 194 (testimony of McGrath).

First, every transaction or interaction with a SCR professional would be based on a solicitation for or effectively entering into a contract. Well established common law and statutory protections are available for private legal actions by harmed consumers. Further, the easy access to the various courts is well recognized in Indiana.

Second, the Indiana General Assembly has provided numerous consumer protection statutes, including IC 24-5-0.5, the Deceptive Consumer Sales Act (DCSA), which gives the Attorney General of Indiana the authority to pursue legal actions against service providers based on general fraud principles. The DCSA remedies available to the Attorney General include: injunction, cost of investigation, civil penalties and consumer restitution. Also, the DCSA allows private legal actions by harmed consumers as a result of the conduct or actions of the supplier of consumer services, which includes individuals who would be on the registry.

Third, various federal laws may also be applicable regarding consumer protection of those involved in transactions with SCR professionals, including healthcare providers. Specifically, the Federal Trade Commission's regulations⁵⁸ govern healthcare and other professional service providers.

IPLA also has a very important enforcement tool: the ability to suspend or revoke a supporting organization's accreditation.⁵⁹ In other words, if the Attorney General's office receives numerous DCSA complaints about SCR professionals within a single occupation, then IPLA might decide the certification they received – and the entity that provided it – fails to meet IPLA's accreditation standards.⁶⁰

Inquiry No. Four: Description of Auditing and Maintenance of the SCR Registry

(1) Auditing

IPLA will retain the authority to “audit” the information and representations of anyone who registers. Whether IPLA must audit every registration is a matter to be determined by the Legislature. For its part, IPLA believes the best course is to engage in random auditing and use best practice methodologies to improve the likelihood of effectiveness.

As part of the registration process, individuals must “swear under the penalties of perjury” to the truthfulness of two things: (1) that they meet the baseline statutory eligibility standards;⁶¹ and (2) that they have completed the predetermined certification process offered by an accredited organization. Intentional misrepresentations to IPLA will constitute a criminal violation – similar

⁵⁸ FTC regulations are located at Title 16 of the Code of Federal Regulations. These include regulations covering the funeral industry, ophthalmic practices and deceptive advertising.

⁵⁹ *Hearing, supra* note 1, at 189 (testimony of McGrath).

⁶⁰ *See generally hearing, supra* note 1, at 190 (testimony of McGrath).

⁶¹ Legislators' preference is to incorporate minimum “character” eligibility standards for PCR professionals. For example, individuals who have outstanding tax liabilities or violent criminal histories may require special consideration before they are eligible to register.

title protection sanctions. And IPLA should be obligated to inform the appropriate law enforcement agencies if and when it discovers fraudulent activity.

(2) Maintenance

IPLA will coordinate with accredited organizations to assist with maintaining the list of registered professionals. Generally, individuals will remain registered unless they lose their certification. Whether someone becomes or remains “certified” is a private relationship matter between the individual and the accredited certifying organization.⁶² As such, organizations must be able to communicate effectively with IPLA when it decertifies its members.

Inquiry No. Five: The Cost of Establishing and Maintaining the SCR Registry

IPLA will incur initial startup costs to establish technological requirements of the SCR, including an online portal capable of receiving and sending communications. This portal will be modeled somewhat after what the system used by registered interior designers.

The estimated cost for initial expenses is approximately three thousand seven hundred fifty dollars (\$3750).⁶³ IPLA will incur an additional cost of fifteen hundred dollars (\$1500) per occupation added to the registry,⁶⁴ and on-going maintenance costs of approximately two hundred fifty dollars (\$250) per week.⁶⁵

After the registry includes five occupations, IPLA will need to hire one employee to coordinate and perform auditing and maintenance functions. The cost of this employee will be approximately twenty-two thousand seven hundred twenty-four dollars (\$22,724). IPLA estimates it will need to hire one employee for every ten additional occupations added to the registry.

Inquiry No. Six: Registration and Renewal Fees

The final step in the SCR process is paying a registration fee, predetermined by the JCC. However, fee amounts might vary across occupations.

Two long-term objectives the JCC should consider when establishing fees are as follows: (1) ensuring that the SCR is revenue neutral, and (2) ensuring that registration fees correspond with IPLA’s administrative expenses.

IPLA will coordinate with the state’s budget agency to determine how and when registration fees will revert to the state’s general fund, as well as the portion of IPLA’s budget appropriation designated to ensure the registry remains fully funded.

⁶² *Hearing, supra* note 1, at 195 (testimony of McGrath).

⁶³ Estimate based on fifty (50) hours of labor by an Indiana Office of Technology (“IOT”) (state) employee.

⁶⁴ Estimate based on twenty (20) hours of labor by an IOT (state) employee.

⁶⁵ Estimate based on two (2) hours of labor by an IOT (state) employee, plus additional technology overhead.

III. Conclusions about Public Policy & Future Legislation

This report achieved its objective of establishing a process for implementing SCR as a means of occupational regulation in Indiana. Although not by design, this report also reveals practical conclusions about state economic and social policy. A few of these key findings include the following:

- Public policy initiatives are more likely to garner bipartisan support if their aim is to achieve one or more of the following objectives: grow a stronger middle class, reduce unemployment, provide opportunities for mobility, reduce prices to consumers, and increase job and entrepreneurial opportunities.

With respect to occupational licensing specifically, bipartisan support can be achieved by pursuing one or more of the following public policy objectives: increase access to professional services, reduce prices for professional services, increase the availability of information about service providers, increase choices for consumers, and minimize the potential risk of poor professional services – especially risks to disadvantaged consumers. Also, less restrictive means of regulating entities is available and should be pursued.⁶⁶

Finally, legislators who participated in this study agree that pursuing legislation to authorize a SCR structure would be a worthwhile endeavor.⁶⁷ As such, this report should prove resourceful as stakeholders author legislation that could transform the occupational licensing landscape.

⁶⁶ *Hearing, supra* note 1, at 206-211 (testimony of McGrath about using the “least restrictive form of regulation” ranging from licensure to market competition and private litigation – see McGrath’s written testimony for an illustration of the same)).

⁶⁷ *Id.* at 205 (statement by Hale) (discussing the importance of practical and theoretical considerations to balance over- and under-regulation. “I think there’s a sweet spot ... and I would love to find that sweet spot here [in Indiana].”); *Id.* at 213 (statement by Sen. Patricia Miller) (“I think we have a lot to consider ... but I think it will help us move Indiana forward and I hope to be able to be a part of that.”); *Id.* (statement by Sen. Greg Taylor) (responding to Miller’s statement, “Ditto.”); *Id.* at 214 (statement by Nicholas Rhoad) (“I think we’ve got a wonderful framework to work with and launch off[.] ... And the Indiana Professional Licensing Agency is ready to work with our members at the Indiana general assembly to work as partners to make this a successful outcome.”); *Id.* at 214-15 (statement by Jud McMillin) (“There are going to be people out there who want to oppose this just because its change and we need to ... have the courage to say we’re willing to have the conversation, we’re going to collect the data and listen to people who have expertise in this area. I just hope that our legislative caucus [agrees] to do that.”).

IV. Acknowledgments

We would like to thank the following members for their support, insight and contributions to the SEA 421 Report.



Senator Patricia Miller

After serving in the Indiana House of Representatives, Patricia Miller was elected to represent Senate District 32 in 1983. Sen. Miller (R-Indianapolis) serves as chair of the Senate Committee on Health and Provider Services and as a member of the Senate Committee on Appropriations, the Senate Committee on Elections/Civil Law, the Health Committee of the National Conference of State Legislatures, and the Midwest Legislative Conference of the Council of State Governments Health and Human Services Committee.

Miller is a registered nurse and Executive Director of the Confessing Movement within the United Methodist Church. She and her husband, Kenneth, are the parents of two children and enjoy spending time with their four grandchildren.

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Senator Greg Taylor

Indianapolis attorney Greg Taylor became a member of the Indiana Senate Democratic Caucus after being elected to represent Senate District 33 in November of 2008.

Sen. Taylor (D-Indianapolis) is the ranking Democrat on the Commerce, Economic Development and Technology Committee. He also serves as a member of the Senate Education and Career Development Committee as well as the Health and Provider Services Committee. Sen. Taylor has also been appointed as a member of the Commission on the Social Status of Black Males and the White River State Park Development Commission.

Sen. Taylor also serves on the Communications, Financial Services and Interstate Commerce Committee of the National Conference of State Legislatures, a bipartisan organization that serves the legislators and staffs of the nation's 50 states, its commonwealths and territories.

Sen. Taylor resides in Indianapolis with his wife, Danielle, and three children, Jackson, Savannah, and Estella.

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Representative Jud McMillin

State Representative Jud McMillin (R-Brookville) represents House District 68, which includes all of Union County and portions of Dearborn and Franklin counties. Rep. McMillin is chair of the Interim Study Committee on Corrections and Criminal Code and sits on the Indiana Public Defender Commission. During the 2014 legislative session, Rep. McMillin authored House Enrolled Act 1005

which reduces government bureaucracy by cutting red tape to help eliminate burdensome regulations so Indiana businesses can continue to grow and prosper.

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Representative Christina Hale

State Representative Christina Hale (D-Indianapolis) represents House District 87 and was first elected in 2012. Rep. Hale has grown up, raised her family and worked her entire life in Indiana.

As a former executive at Kiwanis International, Rep. Hale worked to strengthen and support communities across the globe. She believes that communities thrive when they have active, engaged citizens collaborating for the greater good.

Rep. Hale remains a member of the Kiwanis Club of Indianapolis. She is a graduate of Purdue University and is a member of Saint Thomas Aquinas Church

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David Miller

David Miller joined the Office of the Indiana Attorney General in 1973 as a Deputy Attorney General. In 1977, Miller was named Director of the Consumer Protection Division and Assistant/Chief Counsel to the Attorney General.

In 1992, Miller left the office to go into private practice. In 2001, he became Special Advisor to the Attorney General and, in 2008, was hired as the Legislative Director for the office.

Miller has conducted numerous ICLEF seminars as a speaker and leader relating to Consumer Protection and Administrative Law issues. He has also addressed business groups on legislative/consumer issues for the Attorney General.

A native of Linton, Ind., Miller currently resides in Indianapolis with his wife.

Authors and additional contributors to this report include the following:

Adam H. Berry, Regulatory Policy Director & Special Council, Office of Governor Mike Pence

Nicholas W. Rhoad, Executive Director of the Indiana Professional Licensing Agency

Nicholas R. Goodwin, Communications Director of the Indiana Professional Licensing Agency

Benjamin Evans, Legislative Director, Indiana Professional Licensing Agency

Mark Rusthoven, Senior Policy Research Assistant, Office of Governor Mike Pence

EXHIBIT 1 – Agenda, Public Notice, Witness List, Summary of Testimony, and Written Testimony (if available as was provided by witnesses)

August 5, 2014 Agenda – Certification Registry Commission Meeting

<u>Time</u>	<u>Witness</u>	<u>Notes</u>
<u><i>Morning Session</i></u>		
9:00	Adam Berry & David Miller	Adam is Regulatory Policy Director & Special Counsel in the Governor’s Office David is Deputy Attorney General & Legislative Director in the Office of the Indiana Attorney General
9:15	Connie Jung	Principal, Jung Design President, Interior Design Coalition of Indiana
9:30	Michele Trivedi	Manager, The Arc Insurance Project
9:45	Rick Wajda	CEO, Indiana Builders Association
10:00	Jacob Schpok	Executive Director, Office of Small Business and Entrepreneurship
10:15	John Halal	Founder & President, ChemistrySimplified.com President, Honors Beauty College, Inc. President, Indiana Cosmetology & Barbering Association, Inc.
10:30	Public Comment	Members of the public are asked to sign-in before speaking.
11:00-12:30	<i>Break</i>	
<u><i>Afternoon Session</i></u>		
12:30	Dr. Morris Kleiner	AFL-CIO Chair of Labor Policy & Professor at University of Minnesota – Humphrey School of Public Affairs
1:00	Dr. Dick Carpenter	Professor of Educational Leadership, Research and Foundations at University of Colorado-Colorado Springs – College of Education
1:30	Dr. Gary Wolfram	William E. Simon Professor of Economics at Hillsdale College President of Hillsdale Policy Group
2:00	Lee McGrath	Legislative Counsel and Managing Attorney of the Institute for Justice Minnesota Office
2:30	Public Comment	Members of the public are asked to sign-in before speaking.
Closing	Panelists’ Remarks	Nick Rhoad, IPLA (Co-Chair) Adam H. Berry, Office of the Governor (Co-Chair) Senators Pat Miller & Greg Taylor Representatives Christina Hale & Jud McMillin David Miller, Office of the Attorney General

****Some witnesses confirmed their availability after the agenda was printed. Their testimony and bio information is included below but not necessarily in the agenda above.**

PUBLIC NOTICE

Pursuant to [Senate Enrolled Act 421](#), the Indiana Professional Licensing Agency will be studying the concept of a self-certification registration and issue a report to the Legislative Council before October 1, 2014. The report will include the following:

1. Occupations that may be included on the registry;
2. Whether to provide title protection for the individuals included on the list;
3. Enforcement provisions that would be used;
4. A description of auditing and maintenance of the list;
5. The cost of establishing and maintaining the list; and
6. The cost of an individual applying for and renewing inclusion on the list.

The first public meeting will be held on August 5 in room 431 of the Statehouse. Click [here](#) to review the testimony agenda.

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Witness Summaries

Adam H. Berry & David Miller

BIO: Adam H. Berry is Regulatory Policy Director & Special Counsel in the office of Indiana Governor Mike Pence. David Miller is Deputy Attorney General & Legislative Director in the Office of the Indiana Attorney General.

TESTIMONY: Mr. Berry and Mr. Miller provided introductory remarks; specifically, Mr. Berry offered background of the self-certification registration concept and initiative, and Mr. Miller compared enforcement tools available for the proposed system versus those used currently for licensing matters.

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Connie Jung

BIO: Connie Jung is a registered interior designer and small business owner. She previously served as the President of the Interior Design Coalition of Indiana. She lives in Fishers, Ind.

TESTIMONY: Mrs. Jung testified on the importance of educating the public on exactly what interior designers do and the many technical skills required in the profession. Mrs. Jung noted the importance of recognizing the education required of interior designers through an official designation from the state, which led to the founding of the Interior Design Coalition of Indiana (IDCI) and eventually the Interior Designer Registry, passed into law in 2009.

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EXHIBIT 1 – Agenda, Public Notice, Witness List, Summary of Testimony, and Written Testimony (if available as was provided by witnesses)

Michele Trivedi

BIO: Michele Trivedi is the Manager of the Arc Insurance Project, which provides health insurance advocacy to persons with disabilities, including autism.

TESTIMONY: Mrs. Trivedi testified about the emerging field of Applied Behavior Analysis (ABA), a practice which ranges from addiction to canine training, organizational behavior and human resource management to education of adults and children in both general and special education. Mrs. Trivedi testified that, while a voluntary self-registry may work for some professions, a higher form of certification is needed for providers of medically necessary treatment, specifically with Board Certified Behavior Analysts (BCBA's) who treat patients with autism.

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Rick Wajda

BIO: Rick Wajda is the CEO for the Indiana Builders Association, a trade association representing over 3,000 member companies across the state and the state affiliate of the National Association of Home Builders. Mr. Wajda works with members of the Indiana General Assembly and Indiana's regulatory agencies to insure housing affordability is taken into consideration when policy makers craft laws and regulations for Indiana's citizens.

TESTIMONY: Mr. Wajda testified about voluntary Registered Builder/Remodeler Programs, specifically ones in Kentucky and Oklahoma. His testimony included the statutory requirements in Kentucky and Oklahoma, as well as the efforts of the Indiana Builder's Association (IBA) to review residential contractor licensing and registration. He stated that the IBA is neutral on the licensing of general contractors in the state of Indiana.

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Jacob Schpok

BIO: Jacob Schpok is the executive director of the Office of Small Business and Entrepreneurship and is responsible for oversight of the Keystone Program is the Indiana Small Business Development Center

TESTIMONY: Mr. Schpok testified in favor of self-certification generally and described how the concept might work for Exporting Consultants, on whom small businesses rely when considering whether or not to expand to overseas markets. Mr. Schpok's proposal considers options for exporting generalists, as well as exporting specialists.

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Lindsey Wright

BIO: Ms. Wright is the Director of Music Therapy at Opportunities for Positive Growth and President of the Association for Indiana Music Therapy (AIMT).

EXHIBIT 1 – Agenda, Public Notice, Witness List, Summary of Testimony, and Written Testimony (if available as was provided by witnesses)

TESTIMONY: Ms. Wright testified on behalf of AIMT in support of the self-certification registry concept. She mentioned that her members, hospitals, and patients would benefit from using this type of regulatory system.

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John Halal

BIO: John Halal currently serves as the President of the Indiana Cosmetology and Barbering Association. He is also the President and Founder of ChemistrySimplified.com, a licensed instructor and a former salon and school owner. He has served in the beauty industry for more than 40 years.

TESTIMONY: Mr. Halal testified that licensing can be a barrier to employment in some professions and thus should be limited. He further noted that while self-certification registration may be appropriate for some professions, it would not be appropriate for cosmetology and barbering. Specifically, he noted the risk of Indiana Cosmetology and Barber Schools not meeting “State Authorization” requirements from the Department of Education and thus not qualifying for student loans or grants for their students.

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Dr. Morris Kleiner

BIO: Dr. Morris Kleiner is a professor at the Humphrey School of Public Affairs at the University of Minnesota. He also serves as a visiting scholar at the Federal Reserve Bank of Minneapolis and a Research Associate at the National Bureau of Economic Research headquartered in Cambridge, Massachusetts.

TESTIMONY: Dr. Kleiner testified that certification is preferable to licensing in three ways: (1) certification does not fence out workers or cause the type of problems in labor markets that licensing does; (2) certification is better for consumers than occupational licensing as it gives them more choices among providers; and (3) it is better for state governments as it reduces unnecessary and often excessive lobbying by trade associations to have their occupations licensed.

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Dr. Dick Carpenter

BIO: Dr. Carpenter serves as the Director of Research at the Institute for Justice. In addition, he is a professor of leadership, research and foundations at the University of Colorado, Colorado Springs.

TESTIMONY: Mr. Carpenter’s testimony was based on the findings of his research at the Institute of Justice. The research looked at licensing requirements of 102 low and moderate income occupations in all 50 states and the District of Columbia. The research looked at license fees, training requirements, exams, minimum grade level and minimum age associated with each license in each state, and ranked each occupation and each state by how burdensome the

EXHIBIT 1 – Agenda, Public Notice, Witness List, Summary of Testimony, and Written Testimony (if available as was provided by witnesses)

licensing laws were. Mr. Carpenter noted that licensure requirements vary greatly among the states, undermining the need for strict and burdensome licensure requirements.

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Professor Gary Wolfram

BIO: Dr. Wolfram received his Ph.D. from the University of California at Berkeley and is a professor at Hillsdale College. Dr. Wolfram has worked as an economist for the Senate Majority Caucus staff in Michigan and chief of staff to Congressman Nick Smith from Michigan's 7th District. Dr. Wolfram also served as the deputy state treasurer in Michigan.

TESTIMONY: Dr. Wolfram testified in favor of the registry concept. He opined on the "proper role of government" respective to occupational regulation. He argued that a system of certification benefits labor markets and facilitates consumer choice. But Dr. Wolfram also suggested that licensing may be appropriate when there is a high prevalence of asymmetric information.

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Lee McGrath

BIO: Lee McGrath is the Legislative Counsel for the Institute of Justice and the managing attorney of the Minnesota Office for the Institute. He and his wife Bonnie have four children and live in Edina, Minn.

TESTIMONY: Mr. McGrath testified in favor of the self-certification registration. He stated that Indiana should prefer certification over occupation licensing as a general practice. He stated that certification is less restrictive than licensing but equally effective in protecting the public. In addition, he noted that certification will benefit consumers in the form of greater choice among providers.

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Dr. Charlie Wheelan

BIO: Dr. Wheelan is a senior lecturer and policy fellow at the Rockefeller Center for Public Policy at Dartmouth College in New Hampshire. Prior to joining the faculty at Dartmouth, he was faculty member at the Harris School at the University of Chicago from 2004 to 2012. His doctoral research at the University of Chicago was in the area of occupational licensure.

TESTIMONY: Wheelan wrote in support of the self-certification registration being proposed. After noting how he has put a great deal of thought into this particular issue, he wrote that it would be meaningful information for consumers without limiting choices or imposing overly burdensome regulations on the labor market.

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EXHIBIT 1 – Agenda, Public Notice, Witness List, Summary of Testimony, and Written Testimony (if available as was provided by witnesses)

Written Testimony (if provided by witnesses)

Connie Jung – Former President of the Interior Design Coalition of Indiana

Good morning, my name is Connie Jung, I am a registered interior design, small business owner and now the past president of the Interior Design Coalition of Indiana. I live and work in Fishers, IN. I appreciate all of you giving of your time today and participating in this study.

To give you a little history of the interior design legislation – we began in 2003 to begin to educate legislators and the public on the importance of this concept. As a designer, we battle on a daily basis the general public’s misconception of exactly what it is we do all day. Between HGTV’s inundation of how “easy” design is or the people that just decide they have a “flare” for design and want to start a business – many do not realize the technical and important aspects of our career.

So the general design community thought it was time to begin to educate the public and allow those of us who received and paid for an education within the field and have passed the national qualification test, called the NCIDQ to have a designation that represents this effort. A coalition was developed that is now called the Interior Design Coalition of Indiana or the IDCI to represent designers across the state and effort was begun.

In 2009, this idea was realized through the registration and the passing of our bill. We began working with the IPLA, via Herb Price, to develop the online application and the supporting criteria that were required, through our legislation, to become “registered.”

Since the registration began, we now have 538 registered interior designers within the State of Indiana. Some of the advantages of our registry vs. licensing are:

1. It is strictly voluntary.
2. We do not limit anyone from calling themselves an interior designer, interior decorator, etc. But, you can only call yourself a “registered interior designer” if you meet the criteria that was set forth in the bill.
3. We currently have brought in \$53,800 and some change to the state with very little administrative cost taken from that.
4. Having this designation within Indiana has included Indiana with the other 28 states within the United States of having interior design laws enacted.
5. This designation, within our state, allows the general public to realize they are hiring a professional that has studied and has received the qualifications required to become registered and therefore knows about:
 - a. Fire and safety codes.
 - b. Egress issues for space planning

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- c. Product safety within our industry
6. And lastly, the IDCI is responsible for monitoring the registration and its applicants which again leaves no cost to the state.

This legislation has certainly helped the students within our state. Indiana has at least 8 state universities that offer interior design degrees. Without this legislation, our state would have experienced somewhat of a brain drain within our industry. Now, students educating themselves within our state can now be employed and practice towards becoming registered. It has helped to increase student population and certainly excitement within the universities.

I reached out to a few individuals and asked the following questions:

1. If you are a business owner – how has the registration affected your company and/or staff?
2. What do you believe to be the biggest advantage of being a registered interior designer?

A couple of the responses were this:

From Jill Mendoza, a registered interior designer who owns IDO Incorporated, an interior design studio here in Indianapolis:

She states:

“The registry definitely helps IDO compete on a more open professional platform. Client’s and other regulated design professionals we work for and with look for and expect credentials in the professionals they do business with in this industry. We would not be given the same consideration to participate in the overall commerce of the industry without the “Indiana Interior Design Registry” and the value it brings to the business culture in our industry and State.”

From Alicia McKoy, another registered designer and owner of AE Designs:

She states:

The registration has given me and my staff more pride for our profession in allowing us to provide a unique service, through the registration, to our clients.

She goes on to state – the biggest advantage to the registry the general public can turn to the registry to find professionals that they can trust to be qualified.

I personally agree with the comments above and for me – not only is there pride within the industry, but also pride to live in a state that allows individuals to grow to their highest potential and supports that effort.

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Adam, thank you for inviting me to speak today and to you on the panel today, thank you for taking your time to be a part of this study. This topic certainly has been an important issue to the state, to the past two Governors and certainly to our industry.

And as a long time Hoosier, small business owner and a certified professional, I am thrilled the government is opening themselves up to alternate solutions with this topic.

Thank you again.

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The Arc of Indiana – Michele Trivedi

Testimony – Voluntary Professional Certification and Registry

Good Morning, on behalf of The Arc of Indiana, thank you for the opportunity to testify today. My name is Michele Trivedi, and I am the Manager of The Arc Insurance Project, which provides health insurance advocacy to persons with disabilities, including autism.

Applied Behavior Analysis, or ABA, is a wide field with PhD and Masters level educated professionals and their supervised technicians. The field of ABA includes a wide range of practice – from addiction to canine training, organizational behavior and human resource management to education of adults and children in both general and special education.

ABA Therapy for the treatment of autism is a specific clinical intervention in this field that is done primarily by PhD and Master level trained Board Certified Behavior Analysts (BCBAs) and some psychologists. Psychologists are already licensed by the state; BCBAs are not regulated by the state of Indiana.

ABA is widely accepted across the country as an effective, evidenced based treatment for autism. It is endorsed by the major medical societies. Our Indiana Autism Health Insurance Mandate Law requires coverage for ABA Therapy as medically necessary treatment for autism.

A voluntary self-registry is an excellent solution for many professions that work with persons with disabilities, such as music therapy or art therapy. However, for providers of medically necessary treatment, such as BCBAs, a higher level of regulation is necessary to protect children, their families, and payers from unqualified and unscrupulous persons who should not be practicing, but currently have no restrictions on their ability to enter into the business of treating persons with autism.

For BCBAs, this type of voluntary self-registry already exists at a national level – The Behavior Analysis Certification Board or BACB. Indiana also already has a title protection law in place for BCBAs. Unfortunately, the existence of this law and the voluntary national certification board has not been sufficient to protect children and families in the State of Indiana. The fact of the matter is, anyone can hang up a shingle and claim to provide what they may call “ABA”, or “behavioral autism treatment”, and as long as they do not claim to be a “Board Certified Behavior Analyst” they can serve families and file insurance claims.

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Given that the quality of ABA treatment will determine the lifelong functionality of the person with autism, and the lifelong cost of care and education of that person, a higher level of regulation is truly necessary to protect children, families and payers, including health insurers, Medicaid and the public school system from poor outcomes and higher costs.

The Arc of Indiana, many family advocates and The Hoosier Association of Behavior Analysts leadership is eager to work with the State to increase the standards for ABA practice and to develop a means to regulate BCBAs so that there are real consequences to poor practice and means to protect children, families and payers from unqualified practitioners.

The Arc would like to thank the Governor's office and the panel for their time and their work on this issue, and we are ready to assist you in any way that we can.

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Indiana Cosmetology and Barbering Association - John Halal, President
john@chemistrysimplified.com

We agree that licensing can be a barrier to employment and should be limited. We also agree that “self-certification registration” may be appropriate for athletic trainers, auctioneers, home inspectors, interior design, private investigators, security guards, and others, but do not feel it's appropriate for cosmetology and barbering.

Licensing for cosmetology and barbering is an efficient and effective system that has proven to be necessary for consumer safety. All licenses can be renewed online and printed immediately and licensing fees add almost \$1 million each year to the General Fund.

Several license types have been merged recently to eliminate duplicate licenses and reduce the total number of licenses issued. Schools perform the final practical exam and now schedule the written exam directly with the third party that administers the exam, which eliminates the need for a temporary license and further reduces the administrative burden of the IPLA.

Without licensing, Indiana schools would not meet the “State Authorization” requirements of the Department of Education and would not qualify for student loans or grants for their students. Professional liability insurance would not be available for unlicensed individuals or unlicensed salons.

Over the last few years, there has been a slow, steady erosion of cosmetology licensing that damages the beauty profession and places consumers at risk. Indiana has already deregulated all esthetic services, shampooing, and threading. Anyone can perform these services, anywhere, without any training, license or oversight. The Delta Sky Lounge, at Weir Cook Airport, intends to add manicure services. Blow dry bars are the latest fad and hair braiders want braiding deregulated. Where will these exceptions end?

All cosmetology and barbering services should only be performed by properly trained, licensed operators, in licensed facilities. “Self-certification Registration” within the beauty industry would

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result in individuals working beyond their scope of practice and add to an underground economy, that doesn't have insurance, report all its income, or pay taxes.

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Professor Morris Kleiner

morris.kleiner@gmail.com

Mr. Chairman and members of the 421 Study Panel:

My name is Morris Kleiner. I testify before you today on my own behalf and not as a representative of the University of Minnesota or any other organization with which I am affiliated.

I have a Ph.D. in economics from the University of Illinois. I have worked in government and consulted for many public and private sector organizations. I am a professor at the Humphrey School of Public Affairs at the University of Minnesota. I also teach at the University's Center for Human Resources and Labor Studies. I am a visiting scholar at the Federal Reserve Bank of Minneapolis and a Research Associate at the National Bureau of Economic Research headquartered in Cambridge Massachusetts. I just finished an assignment as a Visiting Scholar last week at the Upjohn Institute for Employment Research in Michigan. My research specialty includes the analysis of institutions, such as occupational licensing in the labor market. I have published in the top academic journals in labor economics and industrial relations, and I am the author, co-author, or coeditor of seven books as well as a forthcoming one. Two of the books focus on occupational regulation and were published in 2006 and 2013. These books are the leading volumes on occupational regulations based on sales and citations to the work in Google Scholar.

Let me start with my conclusions because it establishes a preference for certification over licensure of occupations. Certification is better than occupational licensing for three reasons.

1. First, certification has benefits over licensing for workers. Certification does not fence out workers or cause the type of problems in labor markets that licensing does. Licensing may cause workers to lose the opportunity to move into the middle class because of the barriers to entry. A reduction in licensing requirements could reduce unemployment in the State. Licensing further reduces the ability of workers to move across state lines, and engage in work that is the most beneficial to them and to society. Certification of practitioners does not have these negative features.
2. Secondly, certification is better for consumers than occupational licensing. Similar to licensing, certification sends a signal to consumers about who has met the government's requirements to work in an occupation. However, it does not reduce competition and it does not cause prices to increase the way licensing does. It gives consumers more choices for the kinds of services they need. It gives consumers the right to choose the level of quality they think is appropriate for them rather than having members of an occupation decide what is the level of skill that is necessary for consumers. Also, all consumers do not demand the same level of quality. When

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- members of the legal profession told the Nobel laureate economist Milton Friedman that every lawyer should be of Cadillac quality, he famously replied that many people would be better off with a Chevy (a cheaper but clearly functional alternative). If licensure “improves quality” simply by restricting entry into the profession, then some consumers will be forced to pay for more “quality” than they want or need.
3. Thirdly, certification is better for state government than occupational licensing. It reduces the unnecessary and often excessive lobbying by trade associations to try to convince legislators to enact and the governor to implement licensing regimes under the assumption of protecting the public. Often lobbyists claim that licensing is needed to screen out frauds and incompetents. There is little evidence to support this claim. But licensing laws do offer lobbyists and their trade associations a way to deliver less competition and higher earnings for their members or clients.

There is an important difference between occupational licensing and certification. Licensing restricts the practice of an occupation. Certification restricts the use of the title such as “certified financial analyst.” or “certified interior designer.” Anyone can do financial analysis or interior design but only those who meet the government’s requirements can call themselves a “certified financial analyst” or “certified interior designer.”

The proposal to establish a portal that would facilitate the use of private and voluntary certification as a complement to other state-authorized occupational licensing regimes is an important issue for the Indiana state economy, practitioners and consumers. Beyond my conclusions, I would like to provide some details:

First, occupational licensing reduces employment growth thereby contributing to unemployment. These barriers fence out people who may be qualified but have not gained the credentials through the exact means identified in a licensing law such as a written test, internship, or undergraduate or graduate degree.

Estimates developed by Professor Alan Krueger of Princeton University and the former Head of President Obama’s Council of Economic Advisers and former chief economist in the Department of the Treasury and Professor Alexander Mas, also at Princeton and former Chief Economist at the Department of Labor and Chief Economist at Office of Management and Budget under President Obama and me, showed the cost of licensing nationally in the form of lost jobs to be 0.5% -1.0%. Applying that lower number to Indiana would result in a reduction in the unemployment rate in the state or a gain of approximately 16,000 jobs if licensing were reduced in the state relative to certification or other less restrictive forms of regulation.

Secondly, occupational licensing causes consumers to pay higher prices. By shrinking the available supply of labor, licensing increases prices by 15% or more. Certification does not clearly influence wages and then prices. Less competition means that consumers pay more and have less variety to choose for the services they need. A number of years ago, students at the Humphrey School analyzed the cost of licensing to consumers in Minnesota. They found that the extensive use of licensing cost consumers in Minnesota to pay an incremental \$3 billion a years in higher prices that are redistributed to those with licenses with no clear benefits.

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Third occupational licensing alleges that it will increase consumer protection by screening out incompetents and frauds. Unfortunately and although we may want this to be true, there is little to no evidence for it. Additionally, some legislators tend to grandfather in everyone working when licensing is enacted thus eliminating screening altogether. Also, licensing boards are often captured by licensees and rarely revoke licenses. Most telling about their priorities, nearly all boards depend on the licensees to fund their operating budgets through the payment of licensing fees.

Among the many professions that I have studied are mortgage bankers. What my research at the Federal Reserve Bank of Minneapolis showed is that those states that licensed mortgage bankers had similar default rates as those states that did not license brokers. A major difference is that in states with licensed brokers the fees that consumers had to pay for loans were higher. I have generally found those same findings in the other occupations that I have researched or seen in the research of others.

The reality is that occupational licensing reduces employment growth and contributes to unemployment and increases costs to consumers. The main groups that win under licensing are those who are licensed through higher wages and greater job opportunities for those fortunate to become licensed. Certification has none of the problems of licensing such as raising prices or restricting overall employment. It provides consumers more choice at a lower price than occupational licensing.

Addendum

Hierarchy of occupational regulations from least to most restrictive:

“Registration” means a requirement established by a legislative body in which an individual gives notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. *“Registration”* does not include personal qualifications but may require a bond or insurance. Upon approval, the individual may use *“registered”* as a designated title. A non-registered individual may not perform the occupation for compensation or use *“registered”* as a designated title. *“Registration”* is not transferable and is not synonymous with an *“occupational license.”*

“Certification” is a voluntary program in which the government grants nontransferable recognition to an individual who meets personal qualifications established by a legislative body or private certification organization. Upon approval, the individual may use *“certified”* as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title *“certified.”* *“Certification”* is not synonymous with an *“occupational license.”*

“Occupational license” is a nontransferable authorization in law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by a legislative body. It is illegal for an individual who does not possess an occupational license to

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perform the occupation for compensation. Occupational licensing is the most restrictive form of occupational regulation.

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Dr. Dick M. Carpenter II:

Members of the study committee, good afternoon - My name is Dr. Dick Carpenter. I am a director of strategic research at the Institute for Justice and a professor of leadership, research, and foundations at the University of Colorado - Colorado Springs.

My remarks today are based on research my colleagues at the Institute for Justice and I completed in 2012, research that I think may be useful as you consider the proposed certification system.

In our research, we studied the licensing requirements of 102 low and moderate income occupations in all 50 states and the District of Columbia, the types of occupations that are ideal for individuals entering or re-entering the economy. Often this means those who are on the first few rungs of the economic ladder. These occupations have also dynamic levels of entrepreneurship in recent decades.

The specific requirements we studied included fees paid to the state, time lost to training and experience, the number of exams to be passed, minimum grade level, and minimum age. With these data, we were then able to score and rank each occupation and each state by how burdensome their licensing laws are.

On average, these 102 licenses force aspiring workers to spend nine months in education or training, pass one exam, and pay more than \$200 in fees. One third of the licenses take more than a year to earn. At least one exam is required for 79 of the occupations.

We also found that licensure requirements across states both within and between occupations are very disparate—far more than we anticipated. Such disparities significantly undermine the purported need for licensure requirements or licensure altogether.

There are several types of disparities to note.

1. The vast majority of jobs we studied are done in one state or another without licenses, which means people all over the country are providing the respective services safely without licensure. For example, interpreters are licensed in only 16 states while auctioneers are licensed in 33. Indiana licenses both of them. If there were really an epidemic of dangerous sign language interpreting, for instance, we would expect to see more than just 16 states with a license.
2. Licensing requirements within occupations often vary greatly from one state to another. To work as a manicurist, for example, 10 states require four months or more of training. Yet Alaska demands only about two days and Iowa about nine days. It seems unlikely that aspiring manicurists in Indiana (105 days), Alabama (163 days), and Oregon (140

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days) truly need so much more time in training. But manicurists are not alone. The education and experience requirements for vegetation pesticide handlers, for example, range from zero to 1,460 days, or four years. This high degree of variation is prevalent throughout the occupations. Thirty-nine of them have differences of more than 1,000 days between the minimum and maximum number of days required for education and experience. And another 23 occupations have differences of more than 700 days.

3. A third type of inconsistency surfaces when comparing the requirements of one occupation to another. Emergency medical technicians (EMT) hold lives in their hands, yet on average, 66 other occupations in our sample have greater average licensure burdens than EMTs. In Indiana, 10 occupations have greater average burdens, including barbers and cosmetologists, mobile home installers, and earth drillers. By way of perspective, a cosmetologist in Indiana spends 350 days in training; an EMT a mere 34.

Comparisons and disparities like these illustrate how the difficulty of jumping licensing hurdles often has little to do with risks to public health and safety. I emphasize this point because this is the primary reason used by licensing proponents to justify the need for licensure, the perpetuation of the license, and the often-onerous requirements to earn the license. Yet, in many cases the licensure requirements to enter an occupation appear to have little to do with public health and safety. Although I am sure industry representatives would object, the public health and safety implications for things like sign language interpreters and auctioneers seem quite dubious.

The same can be said for “up and coming” occupations, those that are on the licensing make. Contemporary examples include art therapists and music therapists, just to name two.

Art therapists are licensed in fewer than 10 states, but the professional association representing them is busy agitating for more. For their part, music therapists are licensed in only a very small handful of states, but licensure has been considered in others at the request not of consumers but of music therapists. The bills to create these laws typically start the same way, “To protect the public health and safety....”

Indiana has seen legislative activity in both of these occupations. There is no question that these occupations add value to the social and economic lives of communities. The question is whether the unlicensed practice of such occupations represents a real and significant threat to those communities and if that threat warrants the burden associated with the licensure requirements. To earn a music therapy license in Nevada, for example, one must complete a relevant four-year degree or approved music therapy program, pass a national examination, and pay \$200 to the state. The bill introduced in Indiana to regulate music therapists would have the same requirements.

Licensing for art therapists would require a master's or doctoral degree program in art therapy, or an equivalent course of study, complete a post-graduate internship of 1000 hours or more, pay fees, and pass an examination.

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Before imposing such onerous requirements on practitioners, or to allow for the continuation of such requirements, state leaders would be wise to ask for evidence of threats to public health and safety posed by the occupation, and that evidence should be empirical and systematic, not mere anecdotes, as we so often see when industry leaders lobby for licensure.

It is also worth asking if there are ways to achieve some of the same signal sending effects of licensing without full licensure. There is, in fact, a menu of regulatory options available to the state that do not require full licensing. That menu includes the type of certification under consideration here, which has the advantage of that signal sending but allows for the free practice of an occupation.

Based on our research, there are several other questions worth asking in the design and implementation of the type of certification program Indiana is considering and what occupations would be included.

1. What occupations are licensed in your state but only in a few or perhaps no others?
2. How do the licensure burdens or requirements in your state compare to other states?
3. How do the requirements of particular occupations stack up against those with clear public health and safety implications?

Much of what I have talked about and what others today have or will address pertain to the licensing of individuals, but these same issues may be relevant to entity licensing, where a firm owner or someone in the firm has to obtain licensure in order for the firm to qualify for a certain classification, such as a professional corporation. There are certain benefits accrued to a business to have such a classification, but public benefit that results from a requirement of licensure on firms is open to the same types of questions I mentioned a few moments ago. Absent a demonstrable benefit to public health and safety, the entity licensure requirement likely could be altered and streamlined in the proposed certification system, thereby retaining the benefits to firms without imposing costs ultimately borne by consumers and citizens of the state.

Finally, the types of analysis I am describing are quite similar to a new initiative that is growing in application among the professional licensing community. It is called “right touch” regulation. Right touch originated in the UK as part of refining healthcare regulations and is now spreading to other occupations and countries. It is a process in which elected officials and regulators commit to use evidence and data to identify risks associated with an occupation and find proportionate and targeted ways to address the risk, which may or may not include new or increased regulation. The intention is to balance two extremes: over-regulation, which is seen as interference in personal conduct, and under-regulation, which fails to provide sufficient public protection. The principle guiding this search for proper balance is that regulation plays an important role in protecting the public, but it should not unduly control how people choose to live their lives.

The fact that I can count on one hand the number of states that license music therapists, or that Alaska requires two days of training to work as a manicurist and Indiana requires more than 100,

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or that cosmetologists spend 350 days in training while EMTs spend 34 strongly suggests that in too many occupations we do not have an appropriate balance. I commend this committee for undertaking the important task of seeking that balance between protecting public health and safety and preserving the right to earn an honest living in order to lead a life of dignity and provide for one's family and future.

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Testimony of Lee U. McGrath, Legislative Counsel for the Institute for Justice

Mr. Chairmen and Members of the 421 Study Panel:

My name is Lee McGrath. I am the legislative counsel for the Institute for Justice. Thank you for the opportunity to testify in favor of the proposal to establish a portal that would facilitate the use of private and voluntary certification as a complement to other state-authorized occupational licensing regimes.

The Institute for Justice is a nationwide not-for-profit public-interest law firm. For more than 20 years, IJ has represented individuals who ask for nothing more than the opportunity to earn an honest living. In over 40 cases and legislative efforts, IJ has represented hair braiders, sign hangers, casket makers, animal husbandry providers, interior designers and others wanting to apply the skills they gained in a myriad of ways. Our clients provide the services their customers want to buy but they face overbroad licensing requirements that fence them out. Our clients do not object to health and safety standards. They challenge anti-competitive barriers-to-entry that have nothing to do with health and safety and everything to do with codify those barriers in licensing laws.

Earlier today you heard from Professor Morris Kleiner and my colleague, Professor Dick Carpenter. Both talked about the reasons why your proposal reflects good public policy from an economic perspective. My goal today is to leave you with one overriding idea—***your initiative is worthy of advancement because Indiana should prefer certification over occupational licensing.*** This is equally true from a social justice perspective. That is the focus of my testimony.

Certification is less restrictive than licensing but equally effective. Certification is a titling act. It means the legislature or a private organization establishes requirements involving personal qualifications including education, training and moral character. If the person meets those requirements the person can call himself a certified X, such as a certified financial planner or a certified mechanic. Certification allows an aspiring entrepreneur to earn and use an important signal to potential customers that he meets the requisite standards to be considered competent. The power and beauty of certification is that the signal is an equally-powerful signal as licensing but it does not come with licensing's costs of fewer consumer choices, higher costs and more unemployment. That is because certification does not prohibit non-certified providers from working and competing against certified practitioners.

Licensing is the most restrictive form of occupational regulation. It may use identical personal qualifications as certification. Unlike certification, however, licensing is not voluntary.

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Only those who meet the requirements are allowed to work. In other words, certification and licensing are similar in that, under both the legislature or private organizations establish standards, but only under licensing does the state use its powers to exclude workers from pursuing their occupations. As Professor Kleiner points out, licensing raises prices to consumers but there is little evidence that there is an offsetting increase in consumer protection. This is because real consumer protection comes from competition and providers' reputations. Information about providers' reputations is increasingly easier to obtain because of the growth of the internet. Such information makes consumers more effective in avoiding incompetent providers. In other words, licensing is becoming an anachronistic regulation because increased availability of information about providers' quality makes licensing's use of barriers-to-entry obsolete.

Indiana's policymakers should prefer certification over licensing because consumers benefit from the signals and increased choices of providers without licensing's limits on competition and the resulting higher prices. The state benefits because it can reduce unemployment without reducing consumer protection. Your constituents, as aspiring workers, benefit because certification opens doors that licensing locks.

Your initiative is important because licensing is one of the biggest issues in labor economics today. Twenty-nine percent (29%) of all workers are licensed by state, local and federal governments (with states accounting for approximately 20% of the 29%). Licensing has grown significantly. In the 1950's only about 5% of workers were licensed. But the explosion of licensing laws and the shift to a service economy has caused licensing to grow. This rate of 29% is larger than the rate of unionism (11%) or the percentage of workers who earn the minimum wage (2% of all hourly-paid workers).

Turning the findings of your study into legislation and then law is important not only because of occupational licensing's growth but also the underlying economic issues discussed by Professors Kleiner and Carpenter and others. But there are other, equally important, considerations pertaining to social justice. Let me now turn to those social justice issues, the heart of my testimony.

Occupational licensing has a big effect on wages. Unfortunately, it tends to increase the disparity in wages. Unlike unionism, which increases wages and shrinks the disparity between the top and bottom of pay scales, licensing tends to reward those with means and raise their wages all the more. Thus, the licensed professional earns bigger rewards because licensing reduces competition and increases wages. In essence, licensing has a reverse-Robin Hood effect. If you are concerned about a growing income inequality, you should be concerned about licensing because it exacerbates those negative trends.

Secondly, if you are concerned about disparities in educational achievement, you should be concerned about the growth of licensing. The state and licensing boards are reducing upward mobility for those who do not have access to or choose not to pursue higher education. This flaw in licensing should be a particular concern for legislators who are concerned about their constituents who change careers in mid-life. More specifically, this is a large concern for women who return to the work force after raising children. That is because licensing is based on

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a simple model that a person, usually 18 years of age, has a one-time opportunity to choose a career and make a significant investment in education. That opportunity may not exist for others who in middle age may have the skills or experience to be competent but no longer have the time or resources to return to school to gain the formal education often required in licensing schemes. Said differently, a woman returning to the work force after raising children may be competent to work as an interior designer or comfort those purchasing funeral services but licensing blocks her from pursuing those and other careers because they require significant and specific education.

Third, licensing blocks interstate movement. For example, nurses trained in Indiana cannot immediately work in Minnesota. My state's law is absurd. It reflects Minnesota's policy of fencing—not the state's health policy. The problem of licensing's blocking interstate mobility affects perfectly-qualified people moving to Indiana and other states. But it particularly affects the spouses of military personnel. It is often irrational for a spouse, licensed in one state, to go through the trouble of applying and meeting the idiosyncratic requirements of a different state when the family may be on assignment for only 2 to 3 years. This problem is so rampant that Mrs. Obama and the Department of Defense developed model legislation to address the issue. To your credit, Indiana addressed this problem by codifying a waiver process in IC 25-1-17 *et seq.* The logic of this new law should be extended to others, not associated with the military, relocating to Indiana. It is fortunate that the logic of increasing interstate mobility is embedded in your initiative.

Finally, there is a moral imperative to your initiative. By securing individual rights, the state encourages human flourishing. At the base of such flourishing is work. On this subject, Pope John Paul II wrote eloquently “the obligation to earn one's bread presumes the right to do so. A society that denies this right cannot be justified, nor can it attain social peace.” (*Centesimus Annus* #43).

In conclusion, every state official wants Indiana to fulfill its promise of opportunity and justice. Through hard work, anyone, regardless of where they are born or their physical traits, should have the chance to live the American dream. It is important for Indiana not to put irrational obstacles in the way of that dream. Licensing is such an obstacle. It blocks interstate mobility and closes off non-traditional career paths. It fails to recognize that lots of people learn on the job and advance to higher positions. It rigidly establishes one path, usually formal education, and makes it the only path. This is contrary to the American ideal of opportunity and fairness. It is inconsistent with the ideal of upward mobility. It reflects the social rigidity of medieval guilds of continental Europe and exacerbates income inequality. It should not be the dominant labor policy that Indiana uses to regulate work.

Today, you are considering a proposal that is innovative but measured. It is supported by the best economics and sound thinking about social justice. I strongly encourage you to move forward. Thank you.

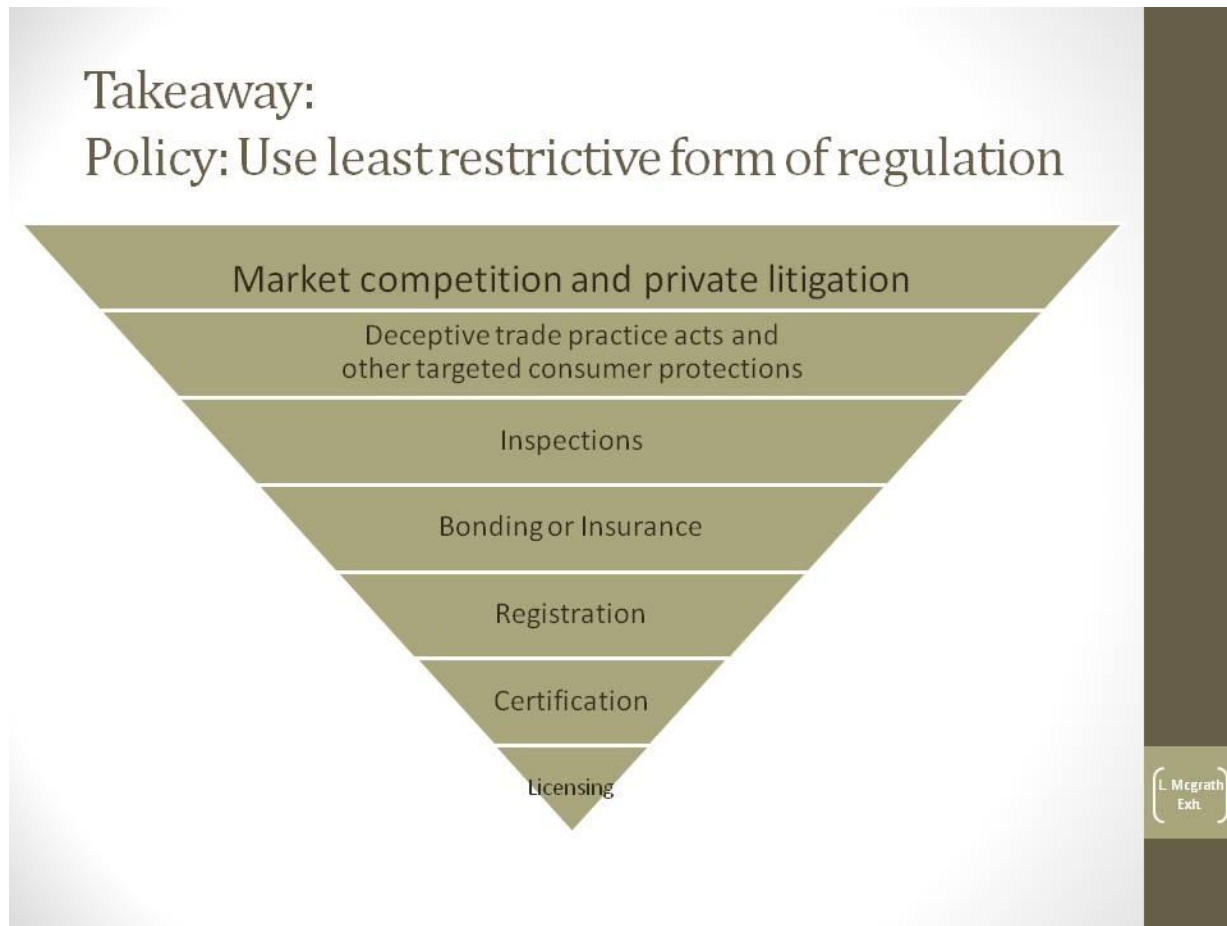
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--Lee McGrath also included the following slide in his testimony to the panel:



The Nelson A. Rockefeller Center at Dartmouth College

The Center for Public Policy and the Social Sciences

TESTIMONY PREPARED FOR THE SEA 421 STUDY PANEL
CHARLES J. WHEELAN

To Members of the SEA 421 Study Panel, Members of the Indiana Professional Licensing Agency, and Other Concerned Parties:

My name is Charlie Wheelan. I am a senior lecturer and policy fellow at the Rockefeller Center for Public Policy at Dartmouth College in New Hampshire. Prior to joining the faculty at Dartmouth, I was a faculty member at the Harris School at the University of Chicago from 2004

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to 2012. My doctoral research at the University of Chicago was in the area of occupational licensure.

I hold a Ph.D. in public policy from the University of Chicago; a Master's degree in public affairs from Princeton; and a BA from Dartmouth College.

I have spent a great deal of time thinking in practical terms about how professional licensing laws should be structured so that they provide meaningful benefits to consumers without doing more harm than good.

I am sorry that I cannot join you in person. I am writing to lend my support to the self-certification registration concept currently under consideration by the Indiana State Legislature. This approach to state certification would provide meaningful information for consumers without limiting choices or imposing overly burdensome regulations on the labor market.

There are two features of self-certification registration that make it a particularly attractive way of helping consumers:

1. IPLA maintains jurisdiction over both the professions to be considered for the registry and the nature of the certification that will be accepted.
2. The self-certification registration process does not require that consumers hire licensed service providers. Instead, consumers are left to make that decision, with the certification registry as an information tool for those who would prefer to hire a state certified service provider.

Please allow me to briefly explain when and why occupational regulation makes sense, and when and why the drawbacks of such regulation can outweigh the benefits. This brief discussion will underscore why the self-certification registration approach strikes a healthy balance.

Occupational regulation can improve public outcomes in one of two ways:

First, a state government can require a certain degree of competence from service providers who pose a potential harm to members of the public *who did not hire the service provider in question*. For example, if my neighbor hires an incompetent electrician, his shoddy work may start a fire that endangers my house even though I was not the one who hired him. Or, a poorly trained architect or engineer may design/construct a building that endangers innocent bystanders or people who inhabit the building years after it is constructed.

To be clear, the limited number of professions that fit in this category should not be eligible for self-certification registration because it is in the state's interest not to allow any consumers to hire a service provider who might do serious harm to innocent parties. Please bear in mind that relatively few professions fall in this category; even highly skilled professionals, such as brain surgeons, typically pose little risk to the general public.

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It is also worth noting that many professional associations seek state licensure as a barrier to keep potential competitors from entering the market. This form of occupational protectionism can be particularly egregious, such as when legislation requires rigid or time-consuming licensure requirements for new entrants to the profession while “grandfathering” those currently practicing the profession.

One finding of my doctoral research was that a profession’s political organization (e.g. the size and budget of its professional association or union) is a good predictor of which professions are most likely to be licensed in Illinois, even after taking into account the harm that a particular profession poses to the public.

Similarly, I found that a sample profession, respiratory therapists, was more likely to be licensed in a state where its association was politically active than in a state where it was not politically active—despite the fact that we have no reason to believe that respiratory therapists are more dangerous in some states than others.

Even well-intentioned licensure laws can have a pernicious effect on mobility in the labor force, both within a state (e.g. an 8th grade teacher who would like to move to 9th grade but is not licensed to teach high school) and across states (e.g. a respiratory therapist who has worked for many years in one state but must fulfill different requirements when moving to a different state). One group that has been harmed of late by myriad state licensing laws is military spouses, who move around the country often and find themselves hobbled in the labor market despite having practiced their profession successfully in other states.

I do believe that licensure can play an important social function. However, if I were to make a broad statement, I would say that states tend to license too many occupations at present rather than too few. There is not enough appreciation of three key costs associated with licensure:

- a) Licensure inhibits mobility, as noted above.
- b) Many licensure requirements appear to have limited impact on quality in the profession, yet the costs of licensure can deter otherwise qualified candidates. (For example, many teacher certification requirements have shockingly little correlation with teacher quality.)
- c) Licensure laws are often abused by professional associations in ways that protect existing practitioners rather than serving consumers.

Second, the state can regulate occupations in ways that help consumers make an informed decision. Bear in mind that there are many private sector mechanisms that provide important information to consumers. When one buys a Toyota car or a GE appliance, an important component of the brand is the information on quality that underlies it. And since I mentioned brain surgeons, I should point out that states do not generally license brain surgeons separately from a general license to practice medicine; obviously most of us would choose a “board certified” brain surgeon. (The American Board of Neurological Surgery offers this certification.)

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Still, some professions may not have private sector mechanisms that accurately/effectively denote quality. And many citizens may prefer to have government offer objective information on quality for various occupations. In these cases, government can help consumers by offering state certification as a decision-making tool.

As noted above, self-certification registration is not appropriate for professions whose work poses harm to third parties who have not contracted the work. In all other cases, this approach offers all the benefits of professional regulation without any of the drawbacks.

To summarize, self-certification registration:

1. Offers objective information to consumers in a relatively inexpensive way.
2. Offers discretion to IPLA with regard to what professions are considered for self-certification registration, so that professions more suitable for licensure than certification can be excluded.
3. Offers discretion to IPLA with regard to the factors to be considered for registration, so that the criteria selected are likely to be predictive of quality.
4. Given #2 and #3 above, any specific issues with regard to certification of a particular occupation, such as whether practitioners should pass an exam or have regular criminal background checks, can be addressed when IPLA considers certification for that profession, and should not be grounds for opposing self-certification registration in general.
5. Preserves choice in the marketplace for consumers who do not consider state certification to be helpful or germane.
6. Does not inhibit mobility in the labor market. Self-certification registration provides a mechanism whereby highly skilled practitioners who move to Indiana, such as military spouses, are not unfairly excluded from advertising their certification.

Thank you for consideration of this written testimony. I would be happy to answer follow-up questions by phone or e-mail. I can be reached at 773-640-0214 or at Charles.J.Wheelan@Dartmouth.edu.